

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 239 of 1983

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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MANIBEN WD\O LAXMANBHAI UKABHAI

Versus

AMBALAL RAMJIBHAI CONTRACTOR  
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Appearance:

MR SS BELSARE for Petitioners

MS SUDHA R GANGWAR for Respondent  
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CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 17/06/2000

ORAL JUDGEMENT

1. This is a revision under section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 at the instance of the original defendants-tenants, filed against the respondent-original plaintiff-landlord.
2. The plaintiff-landlord had filed a suit for a decree of eviction against the defendants-tenants under

section 13(1)(1) of the Bombay Rent Act on the ground that the defendants-tenants had acquired suitable alternative residential accommodation, and the landlord was, therefore, entitled to a decree of eviction.

3. The trial court dismissed the suit of the plaintiff. The plaintiff-landlord thereupon preferred an appeal, which came to be allowed by the lower appellate court. Hence the present revision.

4. The short crux of the matter is as to whether the defendants-tenants have "built, acquired vacant possession of or have been allotted a suitable residence". On the facts of the case there is no controversy that the defendant-tenant had in fact built another house consisting of two rooms on the ground floor and two rooms on the first floor. There is also no controversy that this construction was made after the defendants-tenants had taken the demised premises on rent from the plaintiff-landlord.

5. Thus, the only controversy revolves around the question as to whether such premises built by the tenants are suitable as residential accommodation or not.

6. The lower appellate court has rightly rejected the contention on the basis of ample evidentiary material on record, when the defendants-tenants attempted to submit that the property constructed by them was in fact a godown and not a residential accommodation at all. This contention was rightly rejected when the evidentiary material on record unambiguously indicated that there were in fact three tenants in the property built by the defendants-tenants who were using the premises for residential purpose. The contention, therefore, that the newly constructed property is not a residential property is, therefore, rightly rejected.

7. It is then sought to be urged by the learned counsel for the petitioners that the newly built property is unsuitable for use as residence by the defendants-tenants because it is built from bamboo or bamboo chips. Firstly it must be noted that unsuitability of the property for residence on this ground viz. that it is built from bamboo or bamboo chips, is a contention raised in the revision for the first time. It has not been urged before the lower appellate court that because the property constructed by the defendants-tenants is of this particular nature, it cannot be used as a residence by the defendants-tenants. Had this contention been taken, appropriate evidence

would have been led as to the nature of construction and the suitability of such property for use as residence, and in that case, the lower appellate court would have recorded its finding of fact on the basis of such evidentiary material on record. However, since this contention was not taken before the lower appellate court, this court in a revision under section 29(2) of the Bombay Rent Act cannot enter into hypothetical questions, particularly in the absence of appropriate evidentiary material on record.

8. Even otherwise, I am of the opinion that even assuming that the construction materials used were not so as to lend any reasonable degree of permanency to the structure, in my opinion, if this property was suitable for the residence of three tenants of the defendants, I fail to see how it will be unsuitable for their own residence.

9. A contention was also sought to be raised that the property in question no longer existed on the date of the decree and that therefore no decree could have been passed. This contention is not based on a true and correct interpretation of the evidence on record. The lower appellate court has found that the defendants-tenants have clearly exaggerated beyond all reasonable limits when they asserted that the property has been destroyed by a cyclone. It cannot be disputed and in fact it is not disputed that on the date of the suit, the property was intact and undamaged and existed in the same form in which it was constructed. On the date of the suit it had not suffered any damage whatsoever. Thus, the plaintiff-landlord had a legitimate cause of action in respect of his tenants' property which was as intact as on the date of the construction. The lower appellate court has in no uncertain terms appreciated the evidentiary material on record (and in any case there is no controversy on this point), that it was only during the pendency of the suit that the property was damaged. However, the lower appellate court, on a total appreciation of the evidence on record, including photographs of the property, arrived at a finding of fact to the effect that the property has only suffered some damage, that the ground floor consisting of two rooms is intact, and only part of the first floor has been damaged. As a consequence flowing from this finding of fact, the lower appellate court has also recorded a finding that the property is easily repairable.

10. It may also be noted at this stage that not only

is there total absence of evidence, but a total absence of even a suggestion of an argument before the lower appellate court that the property was not repairable. Thus, so long as the substantial portion of the property existed on the date of the decree, and whatever partial damage it has suffered as a result of the cyclone was easily repairable, it cannot possibly be legitimately argued that the property acquired by the tenant did not exist on the date of the decree and that therefore such a decree could not be passed.

11. In the premises aforesaid, I find that there is no substance in the present revision and the same requires to be dismissed. Accordingly this revision is dismissed. Rule is discharged with no order as to costs. Interim relief stands vacated.

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